

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 604 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VRAJLAL L SONI

Versus

SHARMISHTHABEN AJITKUMAR PATEL

Appearance:

MR PS CHAMPANERI for Petitioner

MR HB SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/10/97

ORAL JUDGEMENT

1. This is defendant's revision application against the judgment and decree for eviction passed by the learned Joint Civil Judge (Junior Division) Bharuch on 27/2/1981 in Civil Suit No. 78 of 1978 confirmed by the learned District Judge, Bharuch by judgment and order dated 23/2/1984 in Regular Civil Appeal No. 76 of 1981.

2. The suit was filed for obtaining possession of the suit premises and arrears of rent at the rate of Rs.55/- p.m. exclusive of Rs.3/- p.m. by way of water tax and Re.1/p.m. by way of sanitary cess on the ground that the defendant acquired suitable residence and also on the ground of change of user. It was the plaintiff's case that the suit premises was let for the purpose of residence, that the defendant was residing in the suit premises alongwith the members of his family, that he had built a bungalow in Chandranagar society and shifted his residence there, that in this manner he acquired suitable accommodation for his residence, that the suit premises was not used for the purpose of residence for which it was let and that he started using the portion of the suit premises as a shop of goldsmith. The learned trial Judge decreed the suit for possession on the ground that the defendant acquired suitable residence after the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Rent Act') came into operation and that he was liable to be evicted from the suit premises for change of user. As stated above, the defendant faced decree for eviction on both the grounds at the hands of the trial Court and the said decree for eviction came to be confirmed by the appellate Court on both the grounds.

3. Mr. Champaneri, learned advocate appearing for the petitioner-defendant wanted this Court to appreciate the evidence with regard to the purpose for which the suit premises were let. It could be noticed from the findings of the Courts below that the suit premises were used for residence mainly, and by way of incidental use front portion of the ground floor was used for the purpose of business as a goldsmith. Thus, both the Courts below, on appreciation of evidence, came to the conclusion that the dominant user of the suit premises by the defendant was of residence and business use of the front room on the ground floor of the suit premises was only incidental. Dealing with the decisions of the Apex Court and applying the test of dominant user even the appellate Court came to the conclusion that the defendant is liable to be evicted from the suit premises on both the grounds, namely acquisition of suitable residence as also change of user of the suit premises in the sense that the suit premise was not used for the purpose for which it was let. The relevant grounds for eviction appearing in section 13 (1) (k) & (l) of the Rent Act read as under :-

"(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months

immediately preceding the date of the suit; or

- (1) that the tenant after the coming into operation of this Act has built, acquired vacant possession of or been allotted a suitable residence."

4. In my opinion, the defendant has failed to point out any question of law which would arise in this revision application particularly when the law has been well settled on the question of dominant user of the premises let being the test for deciding the purpose of letting. In my opinion, there is no reason to disturb the concurrent findings of facts rendered by the Courts below, with the result that this revision application fails.

5. At this stage Mr. Champaneri, learned advocate appearing for the petitioner-defendant, under instructions from his client prays for time upto 31/12/1997 to vacate the 1st floor of the suit premises as also the rear room (kitchen) on the ground floor. He also prays for time for a period of one year for vacating the front room of the ground floor of the suit premises stated to have been used for business. To this, Mr. H.B. Shah, learned advocate appearing for the respondents submit that time of six months would be sufficient for the defendant to make arrangement particularly when the defendant has already acquired other business premises. In the facts of the case, following directions are issued:-

While dismissing the revision application with no order as to cost, the petitioner-defendant is granted time to vacate upper floor of the suit premises and the kitchen portion of the ground floor of the suit premises upto 31/12/1997 and he is granted time to vacate the front room on the ground floor being used as shop upto 30/9/1998 on condition that the petitioner files usual undertaking before this Court on or before 11/11/1997 inter-alia stating therein that he shall not transfer any portion of the suit premises to any body and that he shall hand over peaceful and vacant possession as stated above and that he will pay up arrears of rent/mesne profits, in case the same are not paid up/deposited, on or before 31/12/1997. From 1/1/1998 the defendant shall pay mesne profits at the rate of Rs.40/- p.m. regularly without any default and he will so state in his undertaking to be filed as stated above.

Rule is accordingly discharged with no order as

to cost.

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